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Written statement* submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Reparations for Torture of Women and Girls

International institutions have long had influence in unifying nation States and establishing core human rights fundamental to the human race. Among these rights is the basic principle that each individual should live and be free from the infliction of torture. Article 1 of the Convention Against Torture defines torture as "any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as to obtain from him or a third person information or a confession . . . " International law has extended prohibitions of those acts which would amount to torture, but lack the necessary purpose or involve less severe physical or mental pain as a means to protect all persons from being subjected to "cruel, inhuman or degrading treatment."1 Essentially, international law has expanded the original definition to encompass instances of torture not previously considered in an attempt to provide the utmost protections and reparations.

The world climate is an organic social environment constantly growing and changing provoking waves of peace and violence in every corner of the globe. While contemporary examples of torture are generally associated with infliction of cruel and degrading punishment on men suspected of terrorism or those abused by tyrannical governments, women and children are often left out of the conversation despite the abundance of stories which provide evidence of them as victims of torture. Many are victims of sexual violence and gender-based crimes, which have not always been recognized on an international level as constituting torture. Torture against women and children is used as a means to "exert control, to dominate and encourage submission"2 in a society that shamefully promotes misogyny. Particularly for women and girls, torture can be experienced in a variety of ways and places including detainment cells by police officers, as the consequence of warring political groups, and by their own husbands in the home. These women and girls are "maimed, sexually mutilated, enslaved, raped – often repeatedly. . . ."3 Many of these women and children come from marginalized communities were barriers to court systems and the obtainment of reparations is seldom successful.

Redress for crimes of torture is and should be a strong interest and has previously been the focus of the Special Rapporteur's Report.4 Reparations have been affirmed by a number of international institutions and nation States as a means to reconcile the pain and suffering experienced. Reparations have been codified in a number of treaties and agreements including the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It should be of utmost importance to protect those most vulnerable to instances of torture who have the least access to redress, as is the case with many women and girls.

Issues Obtaining Reparations

In 2005, the UN General Assembly adopted the "Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."5 These guidelines provide that the "modality of reparations must be proportional to the gravity of the violation."6 While there is no means of providing redress that would restore any woman or child experiencing gender-violence to their former selves, the reparations guidelines permit States to fall short on other fronts. The categories of such reparations include: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The Convention on the Elimination of all Forms of Discrimination Against Women explicitly states that the State has the duty to develop domestic legislation aimed at preventing and punishing acts of torture and to provide

1 The Legal Prohibition Against Torture, Human Rights Watch (2004) https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture#What discussing the Convention Against Torture and its evolution to include more types of violence.

2Ferstman, Carla., Procedural and Substantive Obstacles to Reparations for Women Subjected to Violence (2010) available at: http://www2.ohchr.org/english/issues/women/rapporteur/docs/side_event_june2010/CarlaFerstman.pdf

3 Id. at 2.

4Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, UN Doc. A/HRC/14/22 (April 19, 2010)

5 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted on 16 December 2005 (A/RES/60/147, 21 March 2006)

6 Id.

redress for women subjected to such violence. However, because many of these women face obstacles to obtaining reparations, the system itself fails unless it provides means of destroying those barriers and creating gender equality that would make access to the courts more feasible.

One expert has identified that the failure of investigative bodies to probe crimes from a gender perspective provides inadequate evidence and less gender-based charges for torture making redress unavailable.7 She also found, the inability to collect the evidence essential to prove claims of torture, particularly in instances of rape and genital mutilation, have posed a substantial deterrent to claims brought by women and children. Without substantial evidence, which sometimes cannot be procured without posing a danger to the victim, many of these claims will not progress through the necessary stages of the court system in order to receive reparation, in the form of medical and psychological services and monetary compensation. Evidence collection, including victim and witness accounts, can also be extremely traumatic forcing victims to balance their need for justice with the possibility that they may never prove their claims.

Societal barriers to judicial systems also prevent women and girls from bringing successful claims of torture and obtaining reparations. Many women and girls are from marginalized societies where their public status hinder them from exercising their rights or accessing judicial systems. Some cannot access the courts due to geographical location or unwillingness of the community to recognize sexual and in-home violence as torture. These barriers encompass many marginalized women and girls who cannot be reached by NGOs or government institutions who provide aid.

Moving Forward: Making Accessibility and Obtainment of Reparations Possible

The barriers for women and girls to obtain reparations, tasked with addressing and rectifying the violence that they have endured, should be at the center of the discussion on torture and redress. Human Rights Advocates urges that the Human Rights Council request that States recognize this type of torture and remember their obligations to prohibit, prevent, and redress the violence perpetrated on women and girls around the world, and urges world leaders to address issues preventing these victims from obtaining reparations for the torture they have endured and to reestablish their dedication to prohibiting and preventing all forms of torture as well as committing to their treaty obligations to prosecute such crimes. These States should seek new legislation aimed at achieving these goals and the development of reparations systems that adequately address the issues that women and children torture victims face.

States should create and maintain programs that educate women and girls on their rights and bring awareness to gender-based, sexual, and general torture inflicted on women and girls. Awareness of these crimes, domestically and internationally, would encourage continued involvement of NGOs and government agencies to combat violence amounting to torture and continue to improve the lives of women and children most vulnerable to violent situations. These programs should create efficient avenues for victims to access the court systems and understand the claims process for reparations.

The establishment of the Voluntary Fund for Victims of Torture8 (VFVT) has made positive steps towards assisting victims and their families rebuild their lives by providing immediate and essential services and remedies. However, if these victims cannot establish their claims, those services may never be accessible to them. States should seek to improve investigative techniques that make the process of investigating claims easier on women and children. That would require States to implement legislation aimed at improving the status and public voice of women and children, particularly in marginalized communities. They should seek to prohibit all forms of gender-based torture and establish protections for women and children in public and at home. Through this legislation, women and children should be guaranteed redress for legitimate claims of gender-based crimes amounting to torture.

States should create educational programs that help victims understand their rights and the judicial process. Currently, the VFVT establishes funds available to NGOs and other service groups to provide reparations, in various forms, to victims of torture and their families. Without a stable budget and continued monetary support, many services will not continue to be available to victims.

Lastly, those institutions tasked with providing services and redress for torture should focus on all available forms of rehabilitation beyond monetary compensation. While monetary compensation for the pain that has been inflicted should be an essential part, psychological, medical, and educational services are vital to restoring any victim back to their former selves. Also, States should target their reparative agendas towards community restructuring with

7 Feerstman, *supra* note 3.

8 "United Nations Voluntary Fund for Victims of Torture"
http://www.ohchr.org/EN/Issues/Torture/UNVFT/Pages/WhattheFundAdmin.aspx

the purpose of preventing re-offense against the victim and any future chances of torture being inflicted on other women and children.